

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O. O. C. J.

SUMMONS FOR JUDGMENT NO.99 OF 2007
IN
SUMMARY SUIT NO.3410 OF 2006

M/s. Krishna Enterprise ..Plaintiff.

Vs.

M/s. Perfect Cartons Pvt. Ltd. ..Defendant.

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Mr. M.G. Mimani for the Plaintiff.

Mr. A. K. Goel for the Defendant.

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CORAM: DR. D.Y. CHANDRACHUD, J.

23rd April, 2007.

P.C. :

1. The claim in the Summary Suit is for goods sold, supplied and delivered. The invoices are annexed at Exhibits A-1 to A-10 and the principal amount due thereunder is Rs.6,09,806/-. The invoices are between the period 14th December, 2000 and 24th February, 2001. On 11th January, 2002 the Defendant signed a confirmation of the balance due and payable. Four cheques were issued by the Defendant on 27th January, 2004 which were dishonoured on presentation. There was no response to the letter of demand dated

19th February, 2004. A complaint under Section 138 of the Negotiable Instruments Act was filed by the Plaintiff, but it was dismissed on 31st August, 2006. The Learned 9th Judicial Magistrate, First Class, Thane noted that the complainant (the Plaintiff herein) had not produced any receipts, invoices or challans among other documents.

2. Two defences have been urged at the hearing of the Summons for Judgment. The first defence is that the Suit is barred by limitation. The Suit was lodged on 19th October, 2006. Prior thereto the Defendant had issued a confirmation on 11th January, 2002 which was followed by the issuance of four cheques dated 27th January, 2004 (Exhibits F-1 to F-4) which were dishonoured on presentation. The Suit is instituted within a period of three years of the issuance of cheques and is therefore prima facie within limitation. The second defence is that the cheques were only intended to be as a security deposit during such period as the goods were supplied to the mills on whose behalf the Defendant was to procure orders and payment was made by the mills to the Plaintiff. The defence that the cheques were only a security deposit is belied by the confirmation of liability by the

Defendant and the issuance of Form -C under the Central Sales Tax Act by the Defendant to the Plaintiff which refers to the amount due of Rs.8,71,637/-. In the circumstances, the Defendant has no bonafide or substantive defence.

3. However, having regard to the interests of justice, conditional leave is granted to the Defendant to defend the suit, subject to the deposit of an amount of Rs.6,09,806/- within a period of eight weeks. Upon deposit, the amount shall be invested in a fixed deposit of a nationalized bank by the Prothonotary and Senior Master, to be renewed periodically during the pendency of the Suit. Written Statement to be filed within a period of eight weeks of the date of deposit. The Summons for Judgment is disposed of.